

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

DEBORAH BARONE,  Plaintiff,  v.  ETHICON INC. and JOHNSON & JOHNSON,  Defendants.	<b>Civil Action No. 4:20-cv-03950</b>
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**PLAINTIFF DEBORAH BARONE'S  
AGREED MOTION FOR SPECIAL TRIAL SETTING AND SCHEDULING ORDER**

Plaintiff, Deborah Barone, files this agreed motion asking the Court to set this case for a special trial setting so that the parties have at least three months' notice of a specific trial start date. Pursuant to this Court's order at the February 18, 2022 status conference, the parties have discussed dates of availability for trial. In support thereof, Plaintiff would show as follows:

**A. Special Setting for Trial Date**

Plaintiff requests that the Court specially set the trial such that the parties have at least three months advanced notice of a specific trial date. The parties request this because both sides in this case have designated a number of physician experts. Unsurprisingly, those physicians have busy and varied schedules which will make securing in-court appearances difficult if the parties do not have sufficiently advanced notice of the trial date. Without such notice, the parties would be forced to rely heavily on preserved, videotaped deposition testimony, which is less effective at communicating important information to the jury.

For Plaintiff in particular, one of her primary experts, Dr. Daniel Elliott, needs at least three months advanced notice to be able to appear in person at the trial. Specifically, Dr. Elliott is a practicing surgeon and gynecologist at the Mayo Clinic in Minnesota and his treatment schedule is set three months in advance. In order to keep his court appearance from interfering with his treatment of patients, and to avoid a scheduling conflict which would preclude his in-person appearance, Plaintiff requests sufficiently advanced notice to place the trial on his calendar that far out.

Given that and in response to Plaintiff's previous motion for special trial setting (Dkt. No. 158), the Court ordered that the trial of this matter would be specially set at the April 2022 docket call and that setting would be at least three months following the docket call. Dkt. No. 162. However, following recusal, that special setting was vacated. Dkt. No. 168. Plaintiff respectfully requests that the Court issue a new order providing a similar special setting.

### **B. Proposed Scheduling Order**

The parties have additionally conferred regarding the form scheduling order supplied by the Court and reached the following agreements:

- A. The parties agree that discovery and dispositive motion practice in this case are complete. Therefore, new dates for expert designation, discovery cut off, and dispositive motions do not need to be set.
- B. The parties would request that the Court set the trial of this matter in early August. If the Court's calendar cannot accommodate an early August trial, defense counsel is unable to try the case again until late October.
- C. The parties request that the pretrial conference be scheduled in early or mid-July.
- D. The parties request that the Court set the deadline for the pretrial order to 14 days before the pretrial conference.<sup>1</sup>

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<sup>1</sup> As discussed at the February 18, 2022 status conference, the parties request that the Court set a hearing on certain motions that were not heard given the Court's recusal (*see* Dkt Nos. 140, 141, and 155).

As currently worded, the Court's form scheduling order provides that the case "is subject to being called to trial on short notice during the two week period beginning on this date." As noted in the first part of this motion, the parties request a specific starting date so that experts can be booked and have attached to this motion a proposed scheduling order accomplishing the same.

### **Conclusion & Prayer**

For the foregoing reasons, Plaintiff, Deborah Barone, asks that the Court set this case for a special trial setting so that the parties have at least three months' notice of the trial date. The parties likewise ask that the Court set the trial for a date in early August as set forth above.

Dated: February 23, 2022.

Respectfully submitted,

**SHRADER & ASSOCIATES, LLP**

*/s/ Alex Barlow*

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In addition, as ordered by the Court, the parties submitted a joint chart which identified prior rulings by the MDL on general *Daubert* motions filed by the parties, as well as issues that were not decided by those prior rulings. Dkt. No. 148. The parties respectfully request that the Court enter orders concerning those general *Daubert* motions.

**CERTIFICATE OF CONFERENCE**

I hereby certify that counsel for the parties have conferred concerning the relief sought in this motion and agree to that relief.

/s/ Alex Barlow  
Alex Barlow

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

/s/ Alex Barlow  
Alex Barlow